

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

IN RE:)
)
 AMENDMENT OF LOCAL)
 BANKRUPTCY RULES)
)

ORDER

IT APPEARING that there is a need to amend Local Rules of Practice **3017-2, 4004-1, 7001-1, and 9013-1**; as well as **Official Form 4004-1A** to assist the Court and Bar in the orderly administration of justice, it is,

ORDERED that the attached amendment to the Local Rules of Practice is approved and shall be effective April 1, 2013, subject to the extent that said rule of this Court is not inconsistent with the Federal Bankruptcy Rules. It is further,

ORDERED that the Clerk shall maintain an official copy of the Local Rules of Practice with this amendment, in each of the offices of this Court, located in Roanoke, Lynchburg, and Harrisonburg, Virginia, and shall distribute such other copies in such manner as he may deem appropriate.

ENTER this _____ day of March, 2013.

WILLIAM F. STONE, JR.
Chief Judge

LOCAL RULE 3017-2

Conditional Approval of Disclosure Statements in Small Business Cases

A. Preliminary Review by the United States Trustee: If a Small Business Debtor as defined in 11 U.S.C. § 101(51D) (“the Debtor”) wishes to obtain conditional approval of a disclosure statement, the Debtor shall submit the proposed plan and disclosure statement to the Office of the U.S. Trustee for the Western District of Virginia no fewer than seven (7) days before the proposed plan and disclosure statement are filed with the Court. The U.S. Trustee shall then provide comments to the Debtor within seven (7) days thereafter.

B. Filing with the Court: The Debtor shall file with the Court the proposed plan and disclosure statement together with a motion for conditional approval of the proposed disclosure statement certifying compliance with this Rule and containing a statement as to whether the disclosure statement as filed addresses any concerns expressed by the U. S. Trustee. In addition, the Debtor shall attach to the Motion an affidavit attesting to the truthfulness of the contents of said disclosure statement and that all known material facts germane to the financial condition of the Debtor have been disclosed. The affidavit shall be signed by the Debtor(s), or if the Debtor is a legal entity, by such entity’s chief officer. Such motion and proposed plan and disclosure statement shall be served upon the Office of the U. S. Trustee, counsel for any appointed creditors’ committee, upon any attorney who has filed a notice of appearance or otherwise appeared in the case, and upon any party that has either actually appeared in the case or has filed a request to receive notice.

C. Response by United States Trustee: Within seven (7) days after the filing of the plan, disclosure statement and motion for conditional approval, the U.S. Trustee shall file a statement with the Court indicating either that the filed disclosure statement is satisfactory to the Office of the United States Trustee, or if not, in what respects it is considered to be deficient. Any other party in interest may file a similar statement within such period. The Court will consider any such statements filed before ruling on the motion.

D. Action by the Court: The Court may either grant or deny the motion for conditional approval without a hearing or may schedule the same for an expedited hearing.

E. Additional Considerations:

1. The procedure for conditional approval described herein shall not extend any deadline for filing a plan and disclosure statement previously set by the Court.
2. The Debtor shall bear the burden of obtaining final approval of the disclosure statement in accord with the requirements of 11 U.S.C. § 1125.
3. Conditional approval of the disclosure statement shall not prohibit any party from making timely objection to final approval of such disclosure statement.

LOCAL RULE 4004-1

Discharge in Chapter 13 Cases filed after October 16, 2005

A. Certification of Compliance with §1328: The debtor(s) shall file the "Debtor's Certification of Compliance with 11 U.S.C. §1328" (Local Form 4004-1A) within sixty (60) days of the date the Chapter 13 trustee files the notice of completion of plan payments. The failure to timely file this certification may result in the case being closed without the entry of a discharge order.

B. Discharge Hearing: As soon as practicable after the filing of the debtor's certification, the court will ~~set a discharge hearing pursuant to 11 U.S.C. §1328(h) and the Clerk will send notice to the debtor(s), debtor's attorney, the Chapter 13 trustee, and the United States Trustee.~~ send a notice to all creditors and other parties in interest giving them thirty (30) days to dispute the Chapter 13 trustee's report of completion of plan payments or the debtor's Certification of Compliance and request a hearing on the same. The notice shall include the date, time and place of hearing for any timely request for a hearing on the issuance of the discharge. If no request for a hearing is received within the aforementioned time limit, a discharge may be granted without further notice or hearing.

LOCAL RULE 7001-1

Adversary Proceedings - General Requirements for Allowed Paper Filings

A. Venue: All complaints shall be filed in the divisional office of the Court in which the bankruptcy case is pending.

B. Representation by Counsel: Any entity, as defined in 11 U.S.C. §101(15), other than a person, must be represented at all times by an attorney who is a member in good standing of the Bar of this Court.

C. Requirements of Form: All papers offered for filing shall meet the following requirements of form:

1. Legibility: Papers shall be plainly and legibly type-written, printed, or reproduced.
2. Caption, Official Forms: The caption and form of all pleadings, schedules, and other papers shall be in compliance with the Bankruptcy Rules, Official Forms, and Local Rules. Each paper or set of papers filed shall bear the case number of the case to which it pertains.
3. Size, Margins, etc: Papers, including attachments and exhibits, shall be of standard weight and letter (8 ½ by 11 inches) size, photo-reduced if necessary, with a top margin of not less than 1 ½ inches. All multi-page pleadings and documents shall be fastened into sets at the top. All papers presented for filing at the same time shall be arranged in case number order.
4. Address and, Telephone Number, and Email Address of Attorney: The lower left-hand portion of the signature page of the pleading shall include the name, address, telephone number, and email address, if any, of the attorney or *pro se* party filing the same.

D. Additional Requirements: Each complaint commencing an adversary proceeding must be accompanied by:

1. Filing Fees: the proper filing fee, as prescribed by the Judicial Conference pursuant to 28 U.S.C. 1930(b).
2. Original Signature: a properly completed and originally signed Adversary Proceeding Cover Sheet (A.O. Form B-104). (Upon request, this form will be provided by the Clerk's Office.)

LOCAL RULE 9013-1

Motions Practice

- A. Requirement of Written Motion: In all cases or proceedings, all non CM/ECF motions shall be in writing and be originally signed by the movant or movant's counsel unless made during a hearing or trial.
- B. Grounds and Relief to be Stated: All motions shall state with particularity the grounds therefor and shall set forth the relief or order sought.
- C. Address and, Telephone Number, and Email Address of Attorney: The lower left-hand portion of the signature page ~~or of the~~ pleading shall include the name, address, ~~and~~ telephone number, and email address, if any, of the attorney or *pro se* party filing the same.
- D. Return Date, Conference of Counsel: Except as otherwise provided by an order of the Court or by these Local Rules, all motions shall be made returnable to the time obtained from and scheduled by the Court for a hearing thereon. Before requesting a hearing date on any motion, the proponent shall confer with opposing counsel, in person or by telephone, in a good-faith effort to narrow the area of disagreement.
- E. Requirement of Proof of Service: At the end of each pleading, motion and other paper required to be served upon a party, there shall be a proof of service signed by counsel (or the *pro se* party) certifying that copies were served and detailing the date, manner of service, and the names and addresses of those served.
- F. Extensions: Any request for an extension of time relating to motions must be in writing and approved by the Court.
- G. Determination of Motions Without Oral Hearing: In accordance with Rule 78 of the Federal Rules of Civil Procedure, the Court may rule upon motions without an oral hearing, unless otherwise required by the Bankruptcy Code, the Bankruptcy Rules, or these Local Rules.
- H. Giving Notice of Motion or Hearing: The party filing a motion, response, or other pleading requiring or requesting a hearing on same, shall make a good-faith effort to contact opposing counsel for dates and then obtain a hearing date from the Court and shall give notice of that hearing date to all parties required to receive notice by the Bankruptcy Rules, these Local Rules, or by order of the Court. The original motion, response, or other pleading, the notice of hearing, and certification that notice of the hearing date has been given must be filed with the Clerk within seven (7) days after the Court has given the hearing date. Failure to file such a certification and notice within the seven (7) days may result in the Court's reassignment, without notice, of the hearing date to other matters.

I. Caption; Names of Parties: Every motion initiating a contested matter pursuant to Bankruptcy Rule 9014 shall contain a caption which conforms with Official Form 16B and an additional caption setting forth the debtor's name as shown on the petition, the assigned motion number, and a designation showing the parties as "Movant", "Respondent" and "Trustee" (when applicable). The following is an example:

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
_____ DIVISION

IN RE

JOHN B. DOE
Debtor

Chapter _____

Case No. _____

U. R. BANK
Movant

v.

Motion No. _____

JOHN B. DOE
Respondent
and

I. B. MONEY, TRUSTEE
Respondent

J. Paragraphs; Separate Statements: All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

K. Adoption by Reference; Exhibits: Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

L. Electronic Filings: Service of any pleading filed electronically, other than a complaint and summons initiating an adversary proceeding pursuant to FRBP 7001 or a motion initiating a contested matter pursuant to FRBP 9014, both of which require service pursuant to FRBP 7004, may be made electronically, pursuant to Local Rules 2002-1(D) and 5005-4, upon any attorney or non-represented party who in either case is a registered User of the Electronic Filing System. Service upon others shall be made in accordance with the other provisions of this Rule.

M. When Written Response Required: When any party in interest opposes the relief sought in any motion (other than a motion to dismiss the case filed by the standing chapter 12/13 trustee or the chapter 7 case trustee) filed pursuant to Bankruptcy Rule 9014 which has initiated a contested

matter,¹ such party shall file a written response to such motion, in the nature of an answer to a complaint in an adversary proceeding, which shall put the party having filed such motion on fair notice of any factual dispute with respect to the allegations contained in such motion and of any affirmative defenses and/or other legal contentions in opposition to such motion which such opposing party intends to present at any hearing thereon. Unless a different time is prescribed by any statute, Bankruptcy Rule or pre-hearing or other order entered by the Court with respect to such motion, such response shall be filed with the Court and served upon the proponent of such motion, or if the motion has been filed by counsel, upon such counsel, at least seven (7) days prior to the date of the noticed hearing, or if that is not practicable due to shortness of notice or other cause shown, as soon in advance of the hearing as may be practicable under the circumstances presented. Failure to file such a response will be cause for the Court to treat the motion as uncontested, to continue the hearing upon the motion, or to take such other action as may be appropriate to further the ends of justice.

¹ See Advisory Committee Note (1983) to Bankruptcy Rule 9014 for information as to what constitutes a contested matter. See also 10 Collier on Bankruptcy ¶ 9014.01.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re:	CASE NO. CHAPTER 13
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DEBTOR'S CERTIFICATION OF COMPLIANCE WITH 11 U.S.C. §1328

The Chapter 13 Trustee has filed a notice of completion of payments in my case and I am hereby requesting that the court issue a discharge. ~~I testify, under of penalty of perjury to the following~~ To that end, I/we certify as follows:

1. I/We have completed an instructional course concerning personal financial management as described in 11 U.S.C. §111 and filed evidence of completion of the same with the Court.
2. I/We have not received a discharge in a Chapter 7, 11, or 12 bankruptcy case that was filed within 4 years prior to the filing of this Chapter 13 Bankruptcy or in another Chapter 13 bankruptcy case that was filed within 2 years prior to the filing of this Chapter 13 bankruptcy.
3. ~~I/We have not received a discharge in a in another Chapter 13 bankruptcy case that was filed within 2 years prior to the filing of this Chapter 13 bankruptcy.~~
- 3-4. I/We did not have, either at the time of filing this bankruptcy or at the present time, equity in excess of the statutory amount (see Page 2 at #2) in the type of property described in 11 U.S.C. §522(p)(1) [generally the debtor's homestead].
- 5 4. There is not currently pending any proceeding in which I may be found guilty of a felony of the kind described in 11 U.S.C. §522(q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. §522(q)(1)(B).
5. I/We have made all payments required under the provisions of my/our confirmed Plan which have accrued as of the date below, including any payments to be made by me/us directly to creditors, subject to any agreed deferral of any such payments otherwise due with the consent of the affected creditor.
6. ~~If applicable, I/we certify that as of the date of this certification that I/we have paid all amounts due under any domestic support obligation [as that term is defined in 11 U.S.C. §101(14A)] required by a judicial or administrative order, or by statute, including amounts due either (i) before this bankruptcy case was filed and provided for in the Plan, or (ii) due at any time after the filing of this bankruptcy case:~~
6. I/We (initial the applicable clause or clauses)
(a) did not have at the time this case was filed or at any time since then any domestic support obligation as defined by 11 U.S.C. §101(14A); OR
(b) (i) have been (and/or am now) obliged to pay such a domestic support obligation to _____, whose current mailing address, or if that address is not known to me, the address used for legal notice purposes, is _____, and whose attorney or other designated agent for the receipt of legal notice is _____, whose last mailing address known to me is _____; AND
(ii) that all amounts due on that obligation at the time this case was filed have been paid in full and all payments that have accrued since that time upon such obligation have also been paid; OR
(iii) that I am not fully current as to all such obligations.

I/we certify under of penalty of perjury that the foregoing is true and correct.
To the best of my/our information and belief the above certifications are correct.

Debtor: _____

Date: _____

Debtor: _____

Date: _____

1. A personal financial management course pursuant to 11 U.S.C. §111 is an instructional course approved by the United States Trustee for this District.

2. Pursuant to 11 U.S.C. § 522(p)(1), the statutory amount referred to in paragraph 3 above is \$125,000 if the case was filed before April 1, 2007, \$136,875 if the case was filed April 1, 2007 through March 31, 2010, \$146,450 if the case was filed April 1, 2010 through March 31, 2013, and \$155,675 if the case was filed after April 1, 2013.

3. 11 U.S.C. § 101(14A): The term ‘domestic support obligation’ means “a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is —

(A) owed to or recoverable by--

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.”

4. The type property referred to in 11 U.S.C. §522(p)(1) includes “(A) real or personal property that the debtor or a dependent of the debtor uses as a residence; (B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; (C) a burial plot for the debtor or a dependent of the debtor; or (D) real or personal property that the debtor or a dependent of the debtor claims as a homestead.”

5. 11 U.S.C. §522(q)(1)(A) refers to “a felony(as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title.”

18 U.S.C. § 3156 defines “felony” as “an offense punishable by a maximum term of imprisonment of more than one year.”

6. 11 U.S.C. §522(q)(1)(B) refers to any “debt arising from –

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury to death to another individual in the preceding 5 years.”